

KELLY & RUBIN, LLP.
ATTORNEYS AT LAW

225 BROADWAY, 3rd FLOOR, NEW YORK, NEW YORK 10007
TEL: 212-691-9393 · EMAIL: info@kellyrubin.com

January 15, 2020

Honorable P. Kevin Castel
United States Courthouse
500 Pearl Street, Room 11D
New York, New York 10007

*Defendants shall respond by
January 22, 2020.
S O O R D O N E D
J. Matt, VSD
1-15-20*

**Re: Rivera v. City and FJC
18-cv-09517(PKC)**

Your Honor:

We are the attorneys that represent the plaintiff in the above referenced matter. In brief, this case essentially involves an allegation of excessive force by a law enforcement employee of the City of New York's Human Resources Police Department (HRAPD) and a private security company, FJC Security Services.

The purpose of this letter is to advise the court the parties have reached an impasse regarding the production of FRCP 30(b)(6) deposition witnesses. I have communicated with counsel for the City both in writing and in person regarding this issue. The next scheduled conference in this matter is February 21, 2020 at 12:00 p.m. The fact discovery deadline is January 31, 2020.

The allegations in this case involve claims that while seeking welfare benefits at a New York City office, the defendant HRAPD officer Lamont Baker falsely arrested, and then along with employees of co-defendant FJC Security assaulted the plaintiff. In addition to these and other claims, plaintiff alleges that the City of New York is responsible for negligently hiring and supervising Baker.

The City has produced documents establishing that prior to the assault upon the plaintiff, nine allegations of excessive force were filed with them against Baker resulting in some type of investigation. In addition, one federal lawsuit alleging excessive force was also filed against Baker. (Presumably, the one that resulted in the lawsuit was not reported to the HRA for investigation because no documents related to it were provided to plaintiff). These allegations occurred over a period of less than three years. These documents, while revealing that some investigation was undertaken relative to these complaints, also raise several issues.

Questions regarding the adequacy of the investigations, whether they were done within NYC agency guidelines, if, how and who made any decisions whether to discipline Baker or not, or impose additional supervision, are all relevant to at least the state law claims for Negligent Supervision.

In addition, in their Eleventh Affirmative Defense, the City has claimed the defense of Discretionary Governmental Immunity, presumably with regard to their decision to hire and retain Baker, whether to impose increased supervision, or discipline him in the wake of the clearly large number of allegations over such a short period of time. What was done and by whom in the exercise of those asserted discretionary actions must be explored.

In order to address these issues, the plaintiff has requested that the City produce witnesses able to bind the city in conformance with FRCP 30(b)(6) for these two purposes. The city has refused at this time. The Deposition Notice I've served upon counsel is attached.

The plaintiff respectfully requests that the court schedule a conference to discuss these issues and if necessary establish a briefing schedule so that a motion, if necessary, may be filed, or make such other direction as the court shall deem proper.

Very truly yours,

KELLY & RUBIN, LLP.

Michael Rubin

Michael F. Rubin, Esq. (0697)

VIA ECF

cc: Adria Jasmine Bonillas, Esq.
Jennifer Hurley McGay, Esq.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

VICTOR RIVERA,
Plaintiff(s),

NOTICE OF DEPOSITION

-against-

Civil Action No. 1:18-cv-9517

**THE CITY OF NEW YORK, NYC HUMAN
RESOURCES ADMINISTRATION POLICE
OFFICER LAMONT BAKER, JOHN DOES
1-2 in their Individual and official capacities,
FJC SECURITY SERVICES, INC. and JOHN DOES
3-5.**
Defendant(s).

TO: DEFENDANTS' COUNSEL OF RECORD:

PLEASE TAKE NOTICE that plaintiff, Victor Rivera, will take the deposition upon oral examination of the person(s) designated by The City of New York, pursuant to F.R.Civ.P.30(b)(6), at a date, time and location to be mutually agreed upon but prior to January 31, 2020.

The plaintiff seeks to depose a witness or witnesses able to testify on behalf of the City with regard to the following issues:

Policy and Procedure to be followed by the NYC Department of City Wide Administrative Services (DCAS) and the Human Resources Administration (HRA) in investigating the background of all potential hires for the position of Special Patrolman including Lamont Baker; for exercising discretion in hiring, who has the authority to exercise discretion in hiring Special Patrolmen and whether such discretion was exercised in the hiring of Baker;

Policy and Procedure to be followed by the NYC Department of Investigation (DOI) for investigations into allegations of excessive force against Special Patrolmen such as Baker, employed by the NYC Human Resources Administration Police Department; whether or not investigations into specific allegations of excessive force against defendant Baker between 2015 and the date of occurrence were done within NYC agency guidelines; if, how and who made any decisions whether to discipline Baker or not, retain as an employee or not, or to impose additional supervision, or any other type of additional monitoring based upon the number of allegations of excessive force against Baker;

All matters reasonably related to the above.

Dated: New York, New York
January 15, 2020

Yours, etc.,

KELLY & RUBIN, LLP.
Michael F. Rubin, Esq. (0697)
Attorneys for Plaintiff(s)
225 Broadway, 3rd Floor
New York, New York 10007
Tel. (212) 691-9393

To: Ms. Adria Jasmine Bonillas, Esq.
New York City Law Department
Attorneys for Defendant(s) – City & Baker
100 Church Street, 4th Floor
New York, New York 10007
Tel. (212) 356-5035

Jennifer Hurley McGay, Esq.
Lewis Johs Avallone Aviles, LLP
Attorneys for Defendant – FJC Security Services, Inc.
One CA Plaza, Suite 225
Islandia, NY 11749
Tel. (631) 755-0101